Supreme Court, U.S.
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No. 91-1374

In The

Supreme Court of the United States

October Term, 1991

WILLIAM QUATTROCCHI, ET AL.,

Petitioners,

vs.

DAWN M. COCHRANE,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. WHETHER IT IS CONSTITUTIONALLY PERMISSIBLE TO ALLOW A PRISON OFFICIAL TO IMPOSE AN ULTIMATUM ON AN INMATE'S DAUGHTER TO EITHER SUBMIT TO A STRIP SEARCH OR NEVER SEE HER FATHER AGAIN WHEN THERE IS NO PROBABLE CAUSE OR REASONABLE SUSPICION JUSTIFYING THE STRIP SEARCH.

II. DID THE DISTRICT COURT ERR IN GRANTING PRISON OFFICIALS MOTION FOR A DIRECTED VERDICT WHEN A REASONABLE JURY COULD HAVE CONCLUDED BASED UPON THE FACTS THAT THERE WAS NO PROBABLE CAUSE OR REASONABLE SUSPICION TO JUSTIFY THE STRIP SEARCH OF COCHRANE.

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CITATIONS TO OPINIONS BELOW

The citation for the opinion of the United States Court of Appeals for the First Circuit, in this case is *Cochrane v. Quattrocchi, et al.*, 949 F.2d 11 (1st Cir. 1991). The opinion of the United States District Court for the Judicial District of Rhode Island in this case was issued from the bench in Case Number 90-0331-L and is attached as Petitioner's Appendix B.

JURISDICTION

Respondent concurs with Petitioner's jurisdictional statement.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the following provision of the United States Constitution:

"United States Constitution Amendment IV:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and person or things to be seized."

STATEMENT OF THE CASE

Cochrane brought a civil rights action against various prison officials (the "Prison Officials") alleging that they maliciously and without cause ordered that she submit to a strip search or never visit her inmate father again. The District Court directed a verdict in favor of the Prison Officials. In doing so, the District Court conceded that Cochrane had in fact been faced with the choice of stripping naked or never visiting her father. However, the District Court concluded that since Cochrane chose to see her father she voluntarily surrendered her right to be free from strip searches, and declared there was no constitutional issue at stake. The District Court specifically ruled as a matter of law that Cochrane had no right to go to the prison facility and therefore, no issue of probable cause or reasonable suspicion needed to be considered.

Cochrane appealed to the United States Court of Appeals for the First Circuit arguing that the District Court (a) failed to interpret the facts in the light most favorable to her and, (b) failed to analyze the facts under existing case law specifically: *Blackburn v. Snow*, 771 F.2d 561 (1st Cir. 1985); *Hunter v. Auger*, 672 F.2d 668 (8th Cir. 1982); *Smothers v. Gibson*, 778 F.2d 470 (8th Cir. 1985).

The First Circuit Court of Appeals using the same standard as the District Court, examining the facts in a light most favorable to Cochrane, found that a reasonable jury could have found for Cochrane and reversed and remanded for a new trial.

FACTUAL BACKGROUND

Cochrane adopts the Petitioner's Appendix A & B as her factual background.

ARGUMENT

This appeal is based solely on whether the Appellate Court failed to apply the facts of this case properly under *Federal Rule of Civil Procedure* 50. That standard is well established and set forth clearly in Petitioner's Exhibit A.

A. PRISON VISITORS MAY ONLY BE STRIP SEARCHED IF THERE IS REASONABLE SUSPICION TO BELIEVE THEY PRESENT A RISK TO SECURITY

The law is that visitors at a penal institute may only be strip searched if there is reasonable suspicion or probable cause to believe the visitor poses a threat to prison security. *Thorne v. Jones,* 765 F.2d 1270, 1276 (5th Cir. 1985); *Dougherty v. Campbell,* 935 F.2d 780, 787 (6th Cir. 1991); *Smothers v. Gibson,* 778 F.2d 470, 473 (8th Cir. 1985); *Blackburn v. Snow,* 771 F.2d 556, 563 (1st Cir. 1985).

Cochrane's theory of her case is supported by the facts as follows: Prison Official, Quattrocchi, wanted to harass Cochrane's father, Rickie A. Cochrane. One way to accomplish this was to make visits difficult for his family. Without probable cause or reasonable suspicion, Prison Official, Quattrocchi, ordered prison guards to execute a strip search on Cochrane when she appeared for her next visit. At her next visit, Cochrane was told to either submit

to a strip search or never see her father again. Faced with that ultimatum, she submitted to the search and suffered physical and emotional harm.

B. IT WAS ERROR TO DIRECT PRISON OFFICIALS' VERDICT WHEN A REASONABLY JURY COULD HAVE FOUND FOR COCHRANE UNDER LAW AND FACTS

Prison Officials obfuscate the issues by asking this court to conclude that probable cause to search Cochrane existed when in fact the District Court refused to consider the probable cause issue at all, labeling the issue as a "red-herring". (See Petitioner's Appendix Page B-3, B-4). The Appellate Court correctly pointed out that in a motion for a directed verdict, the trial judge is to only examine the evidence and inferences reasonably to be drawn therefrom in a light most favorable to the non-moving party. In so weighing the evidence, the court must determine whether reasonable persons could reach but one conclusion. *DeLeon Lopez v. Coporacion Insulat DeSequros,* 931 F.2d 116, 123 (1st Cir. 1991); *Wagenmann v. Adams,* 829 F.2d 196, 200 (1st Cir. 1987). The First Circuit decision properly points out that the District Court was incorrect in assuming that probable cause and reasonable suspicion were not issues in the instant case. This case on remand, would present the fact finder with the task of determining whether or not probable cause existed to initiate the strip search of Dawn Cochrane. If no probable cause existed, then the search was per se a violation of Dawn Cochrane's constitutional rights. If the jury finds as a matter of fact that there was probable cause then the

jury should be entitled to come back with a verdict in favor of the Prison Officials.

The Prison Officials would have this Honorable Court believe that the First Circuit's opinion abrogates, prior Supreme Court's rulings which permit prison officials to adopt policies necessary to preserve internal order, security and discipline within a prison system. Contrary to that assertion, the First Circuit's decision merely maintains harmony among the other circuits ruling that visitors have limited rights when attending a prison facility. Among those rights which a visitor maintains is the right to be free from unreasonable searches and seizures specifically strip searches. What the Prison Officials in this case must demonstrate is some individualized indicia of probable cause or reasonable suspicion to search Cochrane. In a 42 U.S.C. Section 1983 action, the question of whether reasonable suspicion, or in this case probable cause, exists is a question for the jury to determine. *Keeler v. Hewitt*, 697 F.2d 8, 12 (1st Cir. 1982).

CONCLUSION

Based upon the foregoing, Respondent/Cochrane, would ask this Honorable Court to deny Petitioner's Writ for Certiorari.

Respectfully submitted,

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